

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OHIO
EASTERN DIVISION

**MASSACHUSETTS MUTUAL
LIFE INSURANCE COMPANY,**

Plaintiff,

v.

**ACE AKRON/CLEVELAND
ENTERPRISES, INC., et al.,**

Defendants.

CASE NO.: 1:07 CV 2291

JUDGE DONALD C. NUGENT

ORDER

This matter is before the Court upon the Report and Recommendation of Magistrate Judge William H. Baughman, Jr. (ECF # 76). In the Report and Recommendation, the Magistrate Judge recommended that the Court deny the Motions for Summary Judgment filed by Defendants the Estate of Kevin Williams (ECF # 71), and National City Capital Corporation (ECF #70).


The pending Motions for Summary Judgment address whether National City Capital Corporation is entitled to recover proceeds from a key man life insurance policy obtained by Kevin Williams, now deceased. The Magistrate Judge recommended that the Court deny the Motions and find that a genuine material fact remains as to the identity of the intended beneficiary of the insurance policy. On November 11, 2009, National City Capital Corporation filed an Objection to the Report and Recommendation, asserting that this case should be resolved as a matter of law at the summary judgment stage and that a trial is not warranted (ECF # 77).

Because an objection was made to the Report and Recommendation, this Court has reviewed the case *de novo*. See FED. R. CIV. P. 72(b). Having reviewed the Report and Recommendation and the corresponding Objection *de novo*, the Court hereby adopts the findings

and conclusions of the Magistrate Judge as its own. Here, the Magistrate Judge correctly determined that genuine issues of material fact exist which preclude summary judgment for either party. Although the evidence in this case may suggest the intended beneficiary, the presence of a mere suggestion falls far short of the applicable standard. Because this Court is unable to find that there is no genuine issue as to any material fact and that a moving party is entitled to a judgment as a matter of law, this case shall proceed to trial.

Based on the foregoing, the Report and Recommendation of Magistrate Judge Baughman (ECF # 76) is ADOPTED, and the Motions for Summary Judgment filed by the Estate of Kevin Williams (ECF # 71) and National City Capital Corporation (ECF # 70) are DENIED. This case shall proceed to trial at 8:30 a.m. on Thursday, January 7, 2010. Further, because no party has made a jury demand in this matter, the case shall be tried to the Court. In its discretion, however, the Court shall empanel an advisory jury to hear this matter pursuant to Federal Rule of Civil Procedure 39(c).

IT IS SO ORDERED.


DONALD C. NUGENT
United States District Judge

DATED: November 19, 2009